

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROCSHAUN DEON HOLLOWAY,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-07-1577
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

MEMORANDUM AND RECOMMENDATION

Petitioner Holloway's application for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 has been referred to this magistrate judge for a report and recommendation (Dkt. 5). The court recommends that petitioner's application be denied with prejudice as time-barred.

BACKGROUND

Holloway alleges that on August 21, 2002 he was convicted by the 183rd District Court for Harris County, Texas of second degree burglary of a habitation with intent to commit theft and sentenced to 15 years in prison. He did not appeal. On October 21, 2005, he filed an application for writ of habeas corpus in state court. His application was denied without written order on the findings of the trial court on November 23, 2005.

ANALYSIS

This case is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under the AEDPA, a petition for habeas relief filed by a person in state custody is subject to a one-year period of limitations which runs from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

Holloway's federal petition, filed May 1, 2007, is time-barred. His state application for writ of habeas corpus did not toll his statute of limitations because it was filed well after his one-year limitations period expired. *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000). Holloway's petition and memorandum present no facts that suggest grounds for equitable tolling of the limitations period.

CONCLUSION


The court recommends that Holloway's petition be summarily denied with prejudice as time-barred.

The court further orders that Holloway's motion to proceed in forma pauperis (Dkt. 2) is denied because he represents that he had \$296.00 in his prison account at the time he filed his petition.. If the district court does not adopt this recommendation, Holloway must file the \$5.00 filing fee within 30 days of the order of the district court or his case may be dismissed.

Holloway is hereby granted notice and a fair opportunity to show why the limitation period has not expired. *See Day v. McDonough*, 126 S. Ct. 1675, 1684 (2006). Accordingly, Holloway has thirty days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

The court further finds that Holloway has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court recommends that a certificate of appealability not issue.

Signed at Houston, Texas on May 18, 2007.


Stephen Wm Smith
United States Magistrate Judge